

House Bill 912 (AS PASSED HOUSE AND SENATE)

By: Representative Fleming of the 117th

A BILL TO BE ENTITLED

AN ACT

To amend Titles 9 and 31 of the Official Code of Georgia Annotated, relating to civil practice and health, respectively, so as to change certain provisions relating to civil procedure and discovery; to provide for production of certain documents including health records; to change certain provisions relating to applicability to nonparties; to provide that when a nonparty is not served with an objection and the nonparty produces records, the nonparty shall be immune from regulatory, civil, or criminal liability for disclosing confidential information; to change certain provisions relating to confidentiality; to change certain provisions relating to furnishing a copy of records to patient, provider, or other authorized person; to provide for compliance with the federal Health Insurance Portability and Accountability Act of 1996; to provide for a time period in which records shall be produced in response to a valid request; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 9 of the Official Code of Georgia Annotated, relating to civil practice, is amended by striking Code Section 9-10-150, relating to continuances for legislators and legislative staff, and inserting in its place a new Code section to read as follows:

"9-10-150.

A member of the General Assembly who is a party to or the attorney for a party to a case, or any member of the staff of the Lieutenant Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Speaker Pro Tempore of the House of Representatives, or the chairperson of the Judiciary Committee or Special Judiciary Committee of either the Senate or the House of Representatives who is the lead counsel for a party to a case pending in any trial or appellate court or before any administrative agency of this state, shall be granted a continuance and stay of the case. The

1 continuance and stay shall apply to all aspects of the case, including, but not limited to, the
2 filing and serving of an answer to a complaint, the making of any discovery or motion, or
3 of any response to any subpoena, discovery, or motion, and appearance at any hearing, trial,
4 or argument. Unless a shorter length of time is requested by the member, the continuance
5 and stay shall last the length of any regular or extraordinary session of the General
6 Assembly and during the first three weeks following any recess or adjournment including
7 an adjournment sine die of any regular or extraordinary session. A continuance and stay
8 shall also be granted for such other times as the member of the General Assembly or staff
9 member certifies to the court that his or her presence elsewhere is required by his or her
10 duties with the General Assembly. Notwithstanding any other provision of law, rule of
11 court, or administrative rule or regulation, the time for doing any act in the case which is
12 delayed by the continuance provided by this Code section shall be automatically extended
13 by the same length of time as the continuance or stay covered."

14 SECTION 2.

15 Said Title 9 is further amended in Code Section 9-11-34, relating to production of documents
16 and things and entry upon land for inspection and other purposes, by striking subsections (c)
17 and (d) and inserting in lieu thereof the following:

18 "(c) *Applicability to nonparties.*

19 (1) This Code section shall also be applicable with respect to discovery against persons,
20 firms, or corporations who are not parties, in which event a copy of the request shall be
21 served upon all parties of record; or, upon notice, the party desiring such discovery may
22 proceed by taking the deposition of the person, firm, or corporation on oral examination
23 or upon written questions under Code Section 9-11-30 or 9-11-31. The nonparty or any
24 party may file an objection as provided in subsection (b) of this Code section. If the party
25 desiring such discovery moves for an order under subsection (a) of Code Section 9-11-37
26 to compel discovery, he or she shall make a showing of good cause to support his or her
27 motion. The party making a request under this Code section shall, upon request from any
28 other party to the action, make all reasonable efforts to cause all information produced
29 in response to the nonparty request to be made available to all parties. A reasonable
30 document copying charge may be required.

31 (2) This Code section shall also be applicable with respect to discovery against a
32 nonparty who is a practitioner of the healing arts or a hospital or health care facility,
33 including those operated by an agency or bureau of the state or other governmental unit.
34 Where such a request is directed to such a nonparty, a copy of the request shall be served
35 upon the person whose records are sought by certified mail or statutory overnight

delivery, return receipt requested, or, if known, that person's counsel, and upon all other
 parties of record,~~and in compliance with Code Section 9-11-5;~~ where such a request to
~~such~~ a nonparty seeks the records of a person who is not a party, a copy of the request
 shall be served upon ~~all parties of record~~, the person whose records are sought,~~and, by~~
certified mail or statutory overnight delivery, return receipt requested, or, if known, that
 person's counsel by certified mail or statutory overnight delivery, return receipt
requested, and upon all parties of record in compliance with Code Section 9-11-5; or,
 upon notice, the party desiring such discovery may proceed by taking the deposition of
 the person, firm, or corporation on oral examination or upon written questions under
 Code Section 9-11-30 or 9-11-31. The nonparty, any party, or the person whose records
 are sought may file an objection with the court in which the action is pending within 20
days of service of the request and shall serve a copy of such objection on the nonparty to
 whom the request is directed, who shall not furnish the requested materials until further
 order of the court, and on all other parties to the action. Upon the filing of such objection,
 the party desiring such discovery may move for an order under subsection (a) of Code
 Section 9-11-37 to compel discovery and, if he or she shall make a showing of good
 cause to support his or her motion, discovery shall be allowed. If no objection is filed
 within ~~ten~~ 20 days of service of the request, the nonparty to whom the request is directed
 shall promptly comply therewith.

(3) For any discovery requested from a nonparty pursuant to paragraph (2) of this
subsection or a subpoena requesting records from a nonparty pursuant to Code Section
9-11-45, when the nonparty to whom the discovery request is made is not served with an
objection and the nonparty produces the requested records, the nonparty shall be immune
from regulatory, civil, or criminal liability or damages notwithstanding that the produced
documents contained confidential or privileged information.

(d) *Confidentiality.* The provisions of this Code section shall not be deemed to repeal the
 confidentiality provided by Code Sections 37-3-166 concerning mental illness treatment
records, 37-4-125 concerning mental retardation treatment records, ~~and~~ 37-7-166
 concerning alcohol and drug treatment records, 24-9-40.1 concerning the confidential
nature of AIDS information, and 24-9-47 concerning the disclosure of AIDS information;
provided, however, that a person's failure to object to the production of documents as set
forth in paragraph (2) of subsection (c) of this Code section shall waive any right of
recovery for damages as to the nonparty for disclosure of the requested documents."

SECTION 3.

1 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by striking
2 subsections (a) and (b) of Code Section 31-33-2, relating to furnishing a copy of records to
3 patient, provider, or other authorized person, and inserting in their place the following:

4 "(a)(1)(A) A provider having custody and control of any evaluation, diagnosis,
5 prognosis, laboratory report, or biopsy slide in a patient's record shall retain such item
6 for a period of not less than ten years from the date such item was created.

7 (B) The requirements of subparagraph (A) of this paragraph shall not apply to:

8 (i) An individual provider who has retired from or sold his or her professional
9 practice if such provider has notified the patient of such retirement or sale and offered
10 to provide such items in the patient's record or copies thereof to another provider of
11 the patient's choice and, if the patient so requests, to the patient; or

12 (ii) A hospital which is an institution as defined in subparagraph (B) of paragraph (1)
13 of Code Section 31-7-1, which shall retain patient records in accordance with rules
14 and regulations for hospitals as issued by the department pursuant to Code Section
15 31-7-2.

16 (2) Upon written request from the patient or a person authorized to have access to the
17 patient's record under a health care power of attorney for such patient, the provider
18 having custody and control of the patient's record shall furnish a complete and current
19 copy of that record, in accordance with the provisions of this Code section. If the patient
20 is deceased, such request may be made by ~~a person authorized immediately prior to the~~
21 ~~decedent's death to have access to the patient's record under a health care power of~~
22 ~~attorney for such patient; the executor, temporary executor, administrator, or temporary~~
23 ~~administrator for the decedent's estate; or any survivor, as defined by Code Sections~~
24 ~~51-4-2, 51-4-4, and 51-4-5.~~ the following persons:

25 (A) The executor, administrator, or temporary administrator for the decedent's estate
26 if such person has been appointed;

27 (B) If an executor, administrator, or temporary administrator for the decedent's estate
28 has not been appointed, by the surviving spouse;

29 (C) If there is no surviving spouse, by any surviving child;

30 (D) If there is no surviving child, any parent.

31 (b) Any record requested under subsection (a) of this Code section shall, within 30 days
32 of the receipt of a request for records be furnished ~~within a reasonable period of time~~ to the
33 patient, any other provider designated by the patient, any person authorized by paragraph
34 (2) of subsection (a) of this Code section to request a patient's or deceased patient's
35 medical records, or any other person designated by the patient. Such record request shall
36 be accompanied by:

1 (1) An authorization in compliance with the federal Health Insurance Portability and
2 Accountability Act of 1996, 42 U.S.C. Section 1320d-2, et seq., and regulations
3 implementing such act; and
4 (2) A signed written authorization as specified in subsection (d) of this Code Section."

5 **SECTION 4.**

6 All laws and parts of laws in conflict with this Act are repealed.